

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In re Applications of	)	
	)	
NEXTEL COMMUNICATIONS, INC.,	)	
Transferor,	)	
	)	
and	)	
	)	
SPRINT CORPORATION,	)	
Transferee,	)	WT Docket No. 05-63
	)	
	)	Application File Nos. 0002031766
	)	through 0002031797
For Consent to the Transfer of Control of	)	
Entities Holding Commission Licenses	)	
and Authorizations Pursuant to Sections	)	
214 and Section 310(d) of the	)	
Communications Act	)	

To: The Commission

**INFORMAL REQUEST OF US UNWIRED INC. FOR COMMISSION ACTION**

US Unwired Inc. ("US Unwired"), by its attorneys and pursuant to 47 C.F.R. § 1.41, hereby submits its Informal Request for Commission Action ("Informal Request") regarding the captioned application (the "Application") submitted by Sprint Corporation ("Sprint") and Nextel Communications, Inc. ("Nextel") on February 8, 2005 (Sprint and Nextel are collectively referred to herein as the "Applicants").<sup>1</sup>

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<sup>1</sup> US Unwired recognizes that petitions to deny the Application were due on March 30, 2005. As of that time, US Unwired was engaged in attempts to resolve this issue with Sprint. Sprint only recently indicated to US Unwired that it would not engage in the dispute escalation process set forth in the parties' controlling contractual agreements. Moreover, Sprint's recent actions in meetings with its

Under the Act,<sup>2</sup> before the Commission is permitted to grant an application, it must find that grant of the application would serve the public interest and convenience. 47 U.S.C. § 310(d). As demonstrated below, the proposed merger between the Applicants, unless modified as set forth herein, would not serve the public interest because Sprint is prohibited from operating the Nextel network in substantial geographic areas covered by the Application. In those areas, US Unwired holds exclusive rights to provide wireless service, and the public interest would be disserved by Sprint's being forced to discontinue that service upon completion of the merger.

Accordingly, US Unwired asks the Commission either to (i) dismiss the Application or (ii) condition it as set forth herein -- including by requiring pre-merger divestitures -- so as to permit uninterrupted wireless service to the affected public and to otherwise advance the public interest.

## **INTRODUCTION**

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Affiliates (as defined below), including US Unwired, fairly indicate that Sprint intends to defer resolution of the issues addressed herein until after the proposed merger is consummated. Accordingly, US Unwired now is compelled to bring this matter to the Commission's attention, does so only reluctantly, and respectfully requests that the Commission consider this submission an Informal Request for Commission Action submitted pursuant to 47 C.F.R. § 1.41.

<sup>2</sup> The Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq.

US Unwired, through various subsidiaries, is an "Affiliate" of Sprint.<sup>3</sup> In a series of contracts with Sprint beginning in June 8, 1998 (the "Agreements"), US Unwired, through subsidiaries, agreed to construct, manage and operate portions of the Sprint PCS wireless network. In return, Sprint granted US Unwired the exclusive right to operate the Sprint PCS wireless network in large swathes of Arkansas, Louisiana, and Texas (the "US Unwired Service Areas").<sup>4</sup> Among other things, Sprint agreed that it would not own, operate or build any other wireless network in those areas during the terms of the Agreements. In reliance on that commitment, US Unwired has invested hundreds of millions of dollars to provide service in the US Unwired Service Areas under the Sprint PCS brand name.

If approved without modification, the proposed merger would result in a violation of US Unwired's exclusive territory rights because the Nextel wireless network that will be acquired by Sprint currently operates in the US Unwired Service Areas where Sprint is precluded from operating a wireless network. Accordingly, if the merger were consummated, Sprint would operate the former Nextel network in those same areas. Sprint itself essentially admits that the merger will violate the exclusivity provisions it has with the Affiliates:

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<sup>3</sup> US Unwired is not an "Affiliate" as that term is used by the Commission in its wireless rules, or in the traditional sense of being a related corporate party. Instead, as disclosed in the Application, Sprint's "Affiliates" are third-party companies that have contracted with Sprint to provide wireless service under the Sprint PCS name in particular geographic locations (collectively, the "Affiliates"). (See Application at 17.)

<sup>4</sup> A complete list of those markets where US Unwired, through its subsidiaries, provides service over the Sprint spectrum is set forth in Exhibit B.

Sprint is subject to exclusivity provisions and other restrictions under its arrangements with the Sprint PCS Affiliates. Continued compliance with those restrictions may limit Sprint Nextel's ability to achieve synergies and fully integrate the operations of Sprint and Nextel, and Sprint or Sprint Nextel could incur significant costs to resolve issues related to the merger under these arrangements . . . [t]hree of the Sprint PCS Affiliates [including US Unwired] have arrangements that do not expressly define the network covered by the exclusivity agreements and as a result these Sprint PCS Affiliates might contend that Sprint Nextel would be in breach of these provisions upon completion of the merger.

*See* Ex. A: Sprint Proxy Statement at pp. 32-33 (pp. 2-3 of .pdf attachment). Despite Sprint's public acknowledgment that it cannot operate Nextel's former network in US Unwired's exclusive areas without violating its contractual obligations, there is no indication in the public record of this proceeding that Sprint has made arrangements to divest the pertinent Nextel properties.

As stated, the Agreements' provisions prohibit Sprint from operating the former Nextel network in US Unwired's exclusive areas after the merger. The Agreements give US Unwired the explicit right to prevent breaches of those provisions, including the exclusivity provisions, through injunction. As a result, the merger, under the structure currently proposed, would not serve the public interest.

US Unwired has tried repeatedly to resolve this conflict with Sprint, but Sprint has made virtually no effort to propose a meaningful, good faith solution. Indeed, over the last 20 days, Sprint has made statements or taken positions suggesting that it intends to defer resolution of the dispute until after the merger is

consummated. In view of this, and because the ramifications of the merger are significant to the public, US Unwired now requests that the Commission consider the public interest attendant to this imbroglio when evaluating the terms under which to approve the merger. Clearly, this issue can be addressed and resolved more efficiently before the merger rather than after the merger, and resolution before the merger will ensure that there is no disruption to the service of Nextel's customers.

## **DISCUSSION**

### **I. SPRINT IS PROHIBITED FROM OPERATING A WIRELESS NETWORK IN US UNWIRED'S EXCLUSIVE TERRITORIES.**

In the 1990s, Sprint Corporation, Sprint Spectrum, WirelessCo. and SprintCom (collectively "Sprint") obtained numerous broadband personal communication service ("PCS") licenses from the Commission for the purpose of establishing a nationwide personal communications services network, the "Sprint PCS Network," to provide voice and data service. As a condition to obtaining the licenses, the Commission required Sprint to construct a national wireless services network within five years. Sprint lacked the capital and other resources to meet its obligation of constructing that national network. As a result, Sprint elected to construct and operate its own network only in the higher-volume urban areas, and separately to contract with third parties (the Affiliates) to construct, operate, manage, and maintain portions of the Sprint PCS Network in lower-density, rural areas.

To that end, Sprint divided the United States into "Service Area Networks." Sprint delegated to various of its Affiliates the exclusive responsibility for constructing, operating and maintaining the Sprint PCS Network in each designated Service Area not serviced directly by Sprint. In return, Sprint gave that Affiliate *exclusive rights* in that Service Area and agreed not to operate or build another network in that area during the contract term.

In June 1998, US Unwired, through its subsidiary Louisiana Unwired, LLC, became a Sprint Affiliate by entering into a contract with Sprint's subsidiaries, Sprint Spectrum L.P. and SprintCom, Inc. ("1998 Louisiana Agreement"). The 1998 Louisiana Agreement covers a Service Area comprising five markets in Louisiana. In February 1999, US Unwired entered into a second Louisiana agreement covering an additional 23 Louisiana markets. In June 1998, Georgia PCS Management, LLC, which later became a subsidiary of US Unwired, entered into a Sprint PCS Management Agreement covering seven markets in Georgia. Effective January 2000, US Unwired, through its subsidiary Texas Unwired, executed a Sprint PCS Management Agreement covering two markets in Texas.<sup>5</sup>

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<sup>5</sup> US Unwired operates several Sprint PCS Affiliates, including Louisiana Unwired, Texas Unwired, and Georgia PCS. Through those Sprint PCS Affiliates, US Unwired is authorized to market and sell wireless products and services without competition from Sprint in a total of 48 markets, currently serving over 500,000 PCS customers, in a 179,000 square mile area covering portions of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.

Under its various Agreements with US Unwired subsidiaries, Sprint granted US Unwired the *exclusive right* to operate a wireless network in US Unwired's Service Areas:

Manager [US Unwired] will be the only person or entity that is a manager or operator for Sprint PCS with respect to the Service Area *and neither Sprint PCS nor any of its Related Parties will own, operate, build or manage another wireless mobility communications network* in the Service Area so long as this agreement remains in full force and effect.<sup>6</sup>

(*See, e.g.,* Ex. C: 1998 Louisiana Agreement § 2.3 at 5; emphasis added.) Thus, pursuant to its agreements with US Unwired, Sprint is prohibited from operating a wireless network in the US Unwired Service Areas.

## **II. SPRINT'S MERGER WILL RESULT IN VIOLATION OF THE EXCLUSIVITY PROVISION.**

On December 15, 2004, Sprint announced its intention to merge with Nextel in 2005. Upon consummation of the merger, Nextel will be a wholly owned subsidiary of Sprint, and Sprint will be renamed Sprint Nextel Corporation. Nextel's current wholly owned subsidiaries will survive as wholly owned subsidiaries of Sprint Nextel. Moreover, Nextel currently owns 32% of the

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<sup>6</sup> The 1998 Louisiana Agreement does not define the term "wireless mobility communications network" and therefore includes any wireless communications network regardless of spectrum. US Unwired's other Agreements with Sprint define "wireless mobility communications network" as "a radio communications system operating in the 1900 MHz spectrum range under the rules designated as subpart E of Part 24 of the FCC's rules." Although those other agreements define wireless networks to be those on the 1900 MHz spectrum, their exclusivity provisions still apply because the Applicants state an intention to migrate Nextel's existing customers and network from the 800 MHz spectrum to the 1900 MHz spectrum. (*See* Application at 62.)

outstanding stock in Nextel Partners, Inc. ("Nextel Partners"), which is a separate company that operates under the Nextel brand name and provides wireless communications services under its own network in mid-sized and smaller markets throughout the United States. (*See* Application at 16.) As a result of the merger, Sprint will own that 32% of Nextel Partners and Nextel Partners will therefore become a Related Party under the US Unwired Agreements and be prohibited from operating a competing wireless network in the US Unwired Service Areas.

Nextel and Nextel Partners operate wireless networks nationwide, serving 297 of the top 300 U.S. markets. (*See* Ex. A: Sprint Proxy Statement at 3.) Nextel and Nextel Partners' coverage overlaps significantly with US Unwired's Service Areas. There is at least an 86% overlap of Nextel and Nextel Partners' communications networks with US Unwired's network (a 24% overlap of Nextel's network with US Unwired's network, and a 62% overlap of Nextel Partners' network with US Unwired's network.)

Following the merger, Sprint Nextel will operate Nextel and Nextel Partners' existing networks, including those portions of the Nextel and Nextel Partners networks that overlap with US Unwired's network. The Application makes clear that Sprint intends to operate Nextel's network seamlessly and immediately after the merger and, indeed, is replete with admissions that Sprint will compete directly with US Unwired in US Unwired's exclusive areas after the merger closes. (*See, e.g.,* Application at 6 n.6, 23, 25.)



Therefore, despite its contractual obligations to refrain from competing directly with US Unwired, Sprint intends to operate a competing wireless network within the US Unwired exclusive Service Areas, which it is prohibited from doing.

**III. THE PROPOSED MERGER WOULD NOT SERVE THE PUBLIC INTEREST OR CONVENIENCE BECAUSE SPRINT IS PROHIBITED FROM SERVING NEXTEL'S CUSTOMERS IN US UNWIRED'S EXCLUSIVE AREAS.**

Under the plain language of the parties' Agreements, Sprint is prohibited from operating the former Nextel wireless network in US Unwired's 179,000 square-mile territory, which covers parts of nine states. All of the Agreements specifically recognize that breaches of their provisions constitute irreparable injury and specifically grant US Unwired the right to an injunction and specific performance to prevent such breaches and to enforce those provisions. (Ex. C: 1998 Louisiana Agreement § 17.6.) Therefore, Sprint Nextel will not be able to serve the customers who currently receive service from Nextel and Nextel Partners in US Unwired's Service Areas.

As a result, approval of the merger as proposed would not serve the public interest as required by section 310 of the Act. Sprint has made no arrangement or accommodation for the hundreds of thousands of Nextel customers to whom it will be prohibited from providing service after the merger closes. These customers are in limbo and, unless some provision is made, those customers will simply "go dark" after the merger.

These issues can be avoided if the Commission requires Sprint to resolve this issue before the merger. Sprint and Nextel currently are able to modify

their merger plans to reach a solution that will not violate the exclusivity provisions and will eliminate the possibility that consumers face a termination of service. The Commission should require that Sprint resolve this issue of public concern now, before the merger is approved by the Commission and consummated by the Applicants.

**IV. US UNWIRED REQUESTS THE COMMISSION TO OBTAIN MORE INFORMATION AND/OR CONDITION APPROVAL ON MODIFICATION OF THE TERMS OF THE PROPOSED MERGER.**

US Unwired has made repeated efforts to resolve this important issue with Sprint. Sprint has been unwilling to participate in the dispute resolution mechanisms set forth in the parties' Agreements, has failed to propose a meaningful solution, and has recently manifested an intent to postpone resolution of this problem until after the merger is consummated.

Accordingly, in an effort to ensure the public interest and to avoid an administrative post-merger burden for the Commission, US Unwired respectfully requests that: (i) the Commission propound requests for additional information on Sprint, similar to those propounded on April 29, 2005, requesting an explanation of how Sprint intends to resolve this issue and how consummation of the merger in light of this issue advances the public interest and convenience; (ii) the Commission grant a meeting between US Unwired and the Commissioners, or pertinent members of their staff, at the Commission's earliest convenience and before the Commission acts on the Application; and (iii) the Commission require Sprint and Nextel to modify the terms of their proposed merger -- including pre-merger

divestiture of the pertinent Nextel assets -- so as to ensure uninterrupted wireless service to the hundreds of thousands of Nextel customers in US Unwired's exclusive territories.

Respectfully submitted,

US UNWIRED INC.



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